

## REMARKS

### STATUS OF CLAIMS

Claims 1, 6, 10, 11, 22, and 24 have been amended.

Claims 36-44 have been added.

No claims have been cancelled or withdrawn.

Claims 1-44 are currently pending in the application.

### INTERVIEW SUMMARY

The Applicant thanks the Examiner for the Interview conducted on June 3, 2005. The interview was between Examiner Djenane Bayard and the applicant's attorney, Craig G. Holmes. Pending Claims 1, 12, 22, and 24 that were rejected in the Office Action were discussed along with the prior art references *Ellesson*, *Zhang*, *Carley*, and *Fletcher*, respectively

In particular, the discussion began by focusing on the rejection of Claim 1 with respect to *Ellesson* and the Applicant's proposed amendment to clarify that the rules for defining the service level agreement define "both the contents of service level agreements and how to organize the contents of service level agreements." In addition, after the applicant's representative explained that Claim 1 was directed to setting-up a service level agreement instead of applying a service level agreement, the Examiner pointed out that the preamble recited "A method for monitoring a service level agreement..." While Claim 1 actually does not include monitoring of a service level agreement (although that is part of Claim 2 that depends on Claim 1), the applicant's representative agreed that the preamble should be modified to prevent such confusion in understanding Claim 1. Hence, in the amendment above, the preamble for Claim 1 is amended to read "A method for defining and monitoring a service level agreement..." in addition to including the amendment that was proposed during the interview. The Examiner requested that this Office Action response include a discussion of the support in the application for the amendment to Claim 1, and this discussion is provided below.

With respect to the proposed amendment to Claim 1, the applicant's representative explained that the rules of Claim 1 define the content and organization of a service level

agreement, whereas the rules in *Ellesson* are for applying a service level agreement and do not define the contents and organization of contents of a service level agreement. While the applicant's representative appeared to be successful in explaining to the examiner that the steps of Claim 1 concern defining or setting up a service level agreement, as opposed to applying a service level agreement as in *Ellesson*, the Examiner indicated that Claim 1 would have to be considered further in light of this understanding. Hence, no agreement as to the allowability of Claim 1 was reached.

With regards to Claim 12 and *Zhang*, the applicant's representative explained that the agents in Claim 12 do not perform the tests, but rather the devices perform the tests and the agents are configured to communicate with the devices. In *Zhang*, the agents perform the tests themselves as opposed to other devices. The Examiner stated that she would consider this distinction further upon receipt of this response. Hence, no agreement as to the allowability of Claim 12 was reached.

With regards to Claim 22 and *Carley*, the applicant's representative and the Examiner were unable to reach agreement as to whether the metrics of *Carley* are the same as the metric parameter information in Claim 22. However, the applicant's representative explained that even if the two were taken to be the same for argument's sake, *Carley* does not disclose "receiving ***through a standardized open interface*** metric parameter information..." (emphasis added.) The Examiner stated that she would consider this distinction further upon receipt of this response. Hence, no agreement as to the allowability of Claim 22 was reached. However, in the amendment above, please note that Claim 22 has been amended to depend from Claim 1.

Finally, with regards to Claim 24 and *Fletcher*, the applicant's representative explained that the "apply times" in Claim 24 were not the same as the "time stamps" of *Fletcher*. The "apply times" in Claim 24 specify in advance when the tests are to be performed whereas the "time stamps" indicate when a test was performed at some time in the past instead of that the test should be performed at some time in the future. The Examiner stated that she would consider this distinction further upon receipt of this response. Hence, no agreement as to the allowability of Claim 24 was reached. However, in the amendment above, please note that Claim 24 has been amended to depend from Claim 1.

## SUMMARY OF THE REJECTIONS

Claims 1, 5-6, 11, and 33 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over “Schema for Service Level Administration of Differentiated Services and Integrated Services in Networks,” draft-ellesson-sla-schema-00.txt, Internet Engineering Task Force, Internet Draft, dated February 19, 1999, by Ed Ellesson et al. (“*Ellesson*”) in view of U.S. Patent Number 6,701,342 issued to Bartz et al. (“*Bartz*”).

Claims 2, 7 and 30 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Bartz* and in further view of U.S. Patent No. 6,704,883 issued to Zhang et al. (“*Zhang*”).

Claims 12, 15 and 21 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Zhang*.

Claims 3, 8, 31 and 34 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Bartz* and in further view of U.S. Patent Application Publication No. 2002/0049815 issued to Dattatri et al. (“*Dattatri*”).

Claim 10 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of U.S. Patent No. 6,466,984 to Naveh et al. (“*Naveh*”).

Claims 26 and 29 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* et al in view of *Naveh* and in further view of *Zhang*.

Claim 27 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view *Naveh* and in further view of *Dattatri*.

Claims 13 and 16 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Zhang* and in further view of *Dattatri*.

Claims 18 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Zhang* and in further view of *Naveh*.

Claim 19 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of *Zhang* in further view of *Naveh* and in still further view of *Dattatri*.

Claims 22-23 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Bartz* in view of U.S. Patent Number 6,701,345 to Carley et al. (“*Carley*”).

Claim 24 and 25 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ellesson* in view of U.S. Patent Number 6,269,401 issued to Fletcher et al. (“*Fletcher*”).

Claims 4, 9, 14, 17, 20, 28, 32, and 35 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The rejections are respectfully traversed.

A. CLAIM 1

(1) INTRODUCTION TO CLAIM 1

As amended above, Claim 1 features:

“A method for **defining and** monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer-implemented steps of:

creating a schema that provides ***a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements***;

receiving information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer; and

**verifying that the information defining the service level agreement *conforms* to the *set of rules* in said schema.**” (Emphasis added.)

Thus, the approach for defining and monitoring a service level agreement of Claim 1 features “creating a schema that provides ***a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements***” and “**verifying that the information defining the service level agreement *conforms* to the *set of rules* in said schema.**” For example, one embodiment is described in the application as follows: “one or more Data Type Definitions (DTDs) that include a ***set of rules which define the tags*** that can be included within a document, for example an XML document, and ***how the tags may be nested*** with each other (XML schema). Moreover, the one or more DTDs specify the set of ***required and optional elements*** (and their attributes) and the ***ways in which they***

*may be combined* within a document.” (Application, page 11, line 20 through page 12, line 2; emphasis added.)

Thus, the DTDs used with XML documents are examples of the “schema that provides a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements” used in the approach of Claim 1. In addition, the DTDs can be used for “**verifying** that the **information defining the service level agreement conforms** to the *set of rules* in said **schema**,” or in other words, that the information that both (1) defines an SLA and (2) defines one or more test for monitoring the level of service *conform* to the *set of rules* included in the DTDs.

The rules in the DTDs that “*define the tags* that can be included within a document” and that the DTDs “specify the set of *required and optional elements*” are examples of the contents of service level agreements that are defined by the DTDs. The rules in the DTDs that “define...*how the tags may be nested* with each other” and that the DTDs “specify...the *ways in which they may be combined*” are examples of how to organized the contents of service level agreements.

Finally, the preamble of Claim 1 is amended to recited a “method for defining and monitoring a service level agreement” to reflect that in Claim 1, the steps are for defining, or setting up, the service level agreement (e.g., by creating the schema, receiving the information defining the service level agreement, and verifying that the information conforms to the rules of the schema). The steps of Claim 1, when taken together, are how the service level agreement is defined, as now reflected in the amendment to Claim 1. “Monitoring” is left in the preamble of Claim 1 since Claim 2 that depends upon Claim 1 reflects steps for monitoring a service level agreement.

Therefore, the amendments to Claim 1 are fully supported by the specification, and no new matter is added.

(2) THE OFFICE ACTION’S CITATIONS FROM *ELLESSON*

To summarize the discussion below, it appears that the Office Action is confusing the use of rules that are included in service level agreements as described in *Ellesson* with the approach of Claim 1, which is focused on how service level agreements are defined. Specifically, in Claim 1, the step of “creating...” concerns a schema that provides a set of

rules used in defining both the contents of service level agreements and how to organize the contents of service level agreements. The step of “receiving...” concerns information that both defines a service level agreement and tests for monitoring service levels. The step of “verifying...” concerns how to ensure that the definition of the service level agreement conforms to the rules of the schema. All of these steps are directed to how to define, or set up, service level agreements, in contrast to the disclosure of *Ellesson* that is directed to the use and application of rules that are part of service level agreements that have already been established.

In the rejection of Claim 1, the Office Action states that *Ellesson* discloses “creating a schema that provides a set of rules for defining service level agreements (See section 2.1, architectural Overview: “the administrator-specified rules are stored in the policy repository or schema)...” However, the cited portion of *Ellesson* states:

“The network administrator uses the management tool to populate the policy repository with a number of ***policy rules that regulate access/use of network resources***. These ***rules could specify***, for instance, the service category to be employed for a particular application, how much bandwidth is allocated to a particular flow or TOS category, the maximum number of flows to be supported between two subnets, etc....the administrator-specified rules are stored in the policy repository in a well understood format or schema. The directory client downloads the policy rules from the repository, and ***uses these rules to classify the packet stream and apply specific actions to thus identified packets***.” (*Ellesson*, Section 2.1, Architectural Overview; emphasis added.)

The cited portion of *Ellesson* first explains that the policy rules stored in the policy repository are used to regulate access and use of network resources, then gives several examples of using such rules, and concludes by stating that the rules are used for packet classification and applying actions to the packets. In other words, the rules in the cited portion of *Ellesson* concern the rules that are used when ***applying*** a service level agreement (SLA). In contrast to *Ellesson*, Claim 1 features rules that ***define*** the contents and content organization of SLAs.

In particular, the only uses in *Ellesson* of the described “rules” are part of applying a service level agreement, such as by specifying a service category for an application, allocating bandwidth, how many flows to support between subnets, classifying packets, and specifying actions for the packets. In contrast, Claim 1 features “a set of rules for defining **both the**

**contents of service level agreements and how to organize the contents of** service level agreements.” Even though in Claim 1 the rules are provided in a schema and in *Ellesson* the rules are stored in a policy repository in a “well understood format or schema,” ***rules for defining an SLA*** as in Claim 1 are not the same as the ***rules used when applying an SLA*** as in *Ellesson*.

Thus, the Applicant respectfully submits that *Ellesson* does not disclose, teach, suggest, or in any way render obvious “creating a schema that provides ***a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements***,” as featured in Claim 1 because the cited portion of *Ellesson* merely describes rules that are applied as part of an SLA which is fundamentally different than the rules for defining an SLA as in Claim 1.

In addition, the Office Action also states in the rejection of Claim 1 that *Ellesson* discloses “verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See section 2.1, Architectural Overview, “These rules could specify for instance the service category to be employed for a particular application...The directory client downloads the policy rules from the repository, and uses these rules to classify the packet stream and apply specific actions to thus identified packets).”

However, the uses of the disclosed rules when applying SLAs in *Ellesson* says nothing about any type of “verifying” function as featured in Claim 1. Specifically, Claim 1 features verifying that the information defining the SLA conforms to the rules that define the contents and content organization of the SLA, and the information being verified is recited in the “receiving” step of Claim 1 as defining tests for monitoring the offered level of service.

As explained above with reference to an embodiment from the application, an example of this verifying step is verifying that the information defining a service level agreement conforms to the set of rules contained in Data Type Definitions (DTDs) as part of an XML schema. Thus, *Ellesson*’s description of taking actions as part of applying an SLA according to the types of rules described in the cited portion of *Ellesson* has nothing to do with the “verifying” step of Claim 1, in which what is being verified in Claim 1 is the ***information that defines the SLA and that such information defines the tests for monitoring*** the level of service. That information defining the SLA in Claim 1 is being verified to ensure that the information “conforms to the rules” “for defining **both the contents of service level**

**agreements and how to organize the contents** of service level agreements.” The Applicant fails to see anything in the cited portion of *Ellesson* or in any other portion of *Ellesson* that discloses anything related to verifying information defining an SLA, little less the verification that such information conforms to rules that define the content and organization of SLAs, as featured in Claim 1.

Thus, the Applicant respectfully submits that *Ellesson* does not disclose, teach, suggest, or in any way render obvious “verifying that the information defining said particular service level agreement conforms to the set of rules in said schema,” as featured in Claim 1 because the cited portion of *Ellesson* describes applying rules that are part of an SLA whereas the “verifying” step of Claim 1 describes verifying information defining an SLA conforms to the set of rules in a schema, and Claim 1 specifies that the rules are “for defining both the contents of service level agreements and how to organize the contents of service level agreements.”

Because *Ellesson* fails to disclose, teach, suggest, or in any way render obvious:

- (1) “creating a schema that provides a set of rules for defining **both the contents of service level agreements and how to organize the contents of** service level agreements” or
- (2) “**verifying that the information defining the service level agreement** conforms to the set of **rules** in said schema,” the Applicant respectfully submits that, for at least the reasons stated above, Claim 1 is allowable over the art of record and is in condition for allowance.

#### B. CLAIMS 6, 10, AND 11

Claims 6, 10, and 11 contain features that are the same as those described above with respect to Claim 1, and in particular all feature (1) “creating a schema that provides a set of rules for defining **both the contents of service level agreements and how to organize** service level agreements” and (2) “**verifying that the information defining the service level agreement conforms** to the *set of rules* in said schema” as featured in Claim 1. Therefore, based on at least the reasons stated above with respect to Claim 1, the Applicant respectfully submits that Claims 6, 10, and 11 are allowable over the art of record and are in condition for allowance.



C. CLAIMS 12, 15, 18, AND 21

In regards to Claims 12, 15, 18, and 21, the Office Action states that *Zhang* discloses “distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the [particular] network; receiving result information based on the devices performing the one or more tests...” The Office Action explains that *Zhang* “teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual tests, each agent sends test results back to controller for analysis (see col. 4, lines 42-45).”

However, the cited portions of *Zhang* state that “the test event is the publishing of a test script *to be run by each subscribing test agent*.” (Col. 4, lines 17-19; emphasis added.) *Zhang* explains that “receiving the test script is the event that each test agent uses to start the test. Thus near-simultaneous *test execution* may be accomplished *by many agents*.” (Col. 4, lines 27-30; emphasis added.) “In the FIG. 2 embodiment, *test agents* 204, 206, and 208 *each execute test script* 214 upon receipt. After *agents* 204, 206, and 208 *complete their individual tests*, each agent sends test results back to controller 202 for analysis.” (Col. 4, lines 42-45; emphasis added.) Thus, in the cited portions of *Zhang* and the intervening portion, *Zhang* clearly describes that the *test agents execute the test script*.

In contrast to *Zhang*, Claim 12 features “*distributing* the one or more *tests* to one or more *agents* that are configured to communication with *devices* that are associated with the particular network” and “receiving result information based on the *devices performing* the one or more *tests*...” (Emphasis added.) Thus, while the tests are distributed to agents, the *agents do not perform the tests*. Rather, the agents are configured to communicate with devices, and the *devices that perform the tests, not the agents*.

In the approach of Claim 1, there are two types of entities, (1) *agents* to whom the *tests are distributed* and that are configured to communicate with devices, and (2) *devices* that *perform the tests*. By reciting that the agents are configured to communicate with the devices, Claim 12 makes clear that the agents and devices are not the same and that the agents are configured to communicate with the devices. Thus, the approach of Claim 12 is fundamentally different than the teaching of *Zhang* in which the test script is both distributed to the agents and in which the agents themselves execute the test script. Besides the agents,

there are no devices disclosed in *Zhang* that perform the tests, as is the case in the approach of Claim 12.

Thus, the Applicant respectfully submits that *Zhang* does not disclose, teach, suggest, or in any way render obvious “*distributing* the one or more *tests* to one or more agents that are *configured to communicate with devices* that are associated with the network,” and “receiving result information based on the devices performing the one or more *tests*,” as featured in Claims 12, 15, 18, and 21 because the approach of *Zhang* merely discloses that the test script is both distributed to the agents and that the agents themselves execute the test script. Therefore, the Applicant respectfully submits that Claims 12, 15, 18, and 21 are allowable over the art of record and are in condition for allowance.

Also, this discussion of “distributing the one or more tests” as featured in Claims 12, 15, 18, and 21 also applies equally to Claims 2, 7, 26, and 30 that also feature “distributing the one or more tests to one or more agents that are configured to communication with devices...” and “receiving result information based on the devices performing the one or more tests” and which were also rejected in the Office Action based on the same cited portions of *Zhang*. Therefore, based on at least the reasons stated above with respect to Claims 12, 15, 18, and 21, and those previously stated above with respect to Claim 1, the Applicant respectfully submits that Claims 2, 7, 26, and 30 are allowable over the art of record and are in condition for allowance.

D. CLAIMS 2-5, 7-9, 13-14, 16-17, 19-20, 23, 25, AND 26-44

Claims 2-5 and 22-24 are dependent on Claim 1, Claims 7-9, 25, and 36-38 are dependent on Claim 6, Claims 13-14 are dependent on Claim 12, Claims 16-17 are dependent on Claim 15, Claims 19-20 are dependent on Claim 18, Claims 26-29 and 39-41 are dependent on Claim 10, Claims 30-33 and 42-44 are dependent on Claim 11, and Claims 34-35 are dependent on Claim 21, and thus the dependent claims include each and every feature of the corresponding independent claims. Each of Claims 2-5, 7-9, 13-14, 16-17, 19-20, 23, 25, and 26-44 is therefore allowable for the reasons given above for Claims 1, 6, 10-12, 15, 18 and 21.

In addition, each of Claims 2-5, 7-9, 13-14, 16-17, 19-20, 23, 25, and 26-44 introduces one or more additional limitations that independently render it patentable, several of which have been discussed above. However, due to the fundamental differences already identified,

to expedite the positive resolution of this case, a separate discussion of most of the further additional limitations of Claims 2-5, 7-9, 13-14, 16-17, 19-20, 23, 25, and 26-44 is not included at this time, with the exception that a brief discussion of Claims 22, 24, 36, 38, 39, 41, 42, and 44 is provided below. Therefore, it is respectfully submitted that Claims 2-5, 7-9, 13-14, 16-17, 19-20, 23, 25, and 26-35 are allowable for the reasons given above with respect to Claims 1, 6, 10-12, 15, 18, and 21-22.

E. CLAIMS 22, 36, 39, AND 42

Claim 22 has been amended to depend from Claim 1, and Claims 36, 39, and 42 that depend on Claim 6, 10, and 11 have been added and include features similar to those in Claim 22. Also, similar to how Claim 23 depends on Claim 22, Claims 37, 40, and 43 have been added that depend upon claims 36, 39, and 42, respectively.

In the rejection of Claim 22, the Office Action states that *Carley* discloses “receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service (See col. 64, lines 8-11).” However, the cited portion of *Carley* states: “Metrics are an important part of quality management in that they provide a method of measuring (for example, sampling testing, and determining) whether a process or product meets a given criterion.” (Col. 64, lines 8-11.)

There is nothing in the cited portion of *Carley* about where the metrics come from, little less that the metrics are received “through a standardized open interface” as featured in Claim 22. The Applicant is not including herein the arguments from previous responses that explain why the metrics in *Carley* are measured quantities that are the results of tests and therefore fundamentally different than “metric parameter information” of Claim 22 that “defines one or more metric tests.” However, even if one were to assume for the sake of argument that the measured metrics disclosed in *Carley* are the same as the metric tests of Claim 22, no where in the cited portion of *Carley* or any other portion of *Carley* is there anything about *Carley*’s metrics being received “through a standardized open interface” as featured in Claim 22.

The brief description of the “metrics” in *Carley* describe metrics in the context of measurement tools that are used to measure process quality and product quality, and *Carley* explains that the measurement process is the inspection part of quality management. (Col. 64,

lines 16-21.) This description of metrics as being associated with measurement tools for quality management indicates that the metrics are built into the system, and therefore, such metrics would not be capable of being received “through a standardized open interface” as featured in Claim 22.

Thus, the Applicant respectfully submits that *Carley* does not disclose, teach, suggest, or in any way render obvious “**receiving through a standardized open interface metric parameter information** that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service,” as featured in Claim 22.

The Office Action also states that *Carley* discloses “verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer (See col. 102, lines 5-7).” However, the cited portion of *Carley* states: “QA Utilities verify the quality of constructed code, and its conformance to standards set down for the development environment.” (Col. 102, lines 5-7).

Thus, the cited portion of *Carley* concerns how computer code is constructed, and specifically whether the code conforms to development environment standards, which is fundamentally different than verifying that metric tests are appropriate for measuring level of service, as in Claim 22. The Applicant fails to see anything in this cited portion of *Carley* that relates to “verifying that...the one or more metric tests will provide an appropriate set of test for measuring the level of service that is being provided to the customer” as featured in Claim 22.

Therefore, based on at least the reasons stated above, the Applicant respectfully submits that Claim 22 is allowable over the art of record and is in condition for allowance because *Carley* does not does not disclose, teach, suggest, or in any way render obvious either “**receiving through a standardized open interface metric parameter information** that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service” or “**verifying** that based on the metric parameter information, the one or more ***metric tests*** will provide an ***appropriate*** set of tests for ***measuring the level of service*** that is being provided to the customer,” as featured in Claim 22.

F. CLAIM 24, 38, 41, AND 44

Claim 24 has been amended to depend from Claim 1, and Claims 38, 41, and 44 that depend on Claim 6, 10, and 11 have been added and include features similar to those in Claim 24.

In the rejection of Claim 24, the Office Action states that *Fletcher* “teaches receiving a service level contract definition that defines apply times for performing the one or more tests (See col. 24, lines 59-60); and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider. (See col. 25, lines 27-38).”

However, the first cited portion of *Fletcher* states that “the network performance statistics are time-stamped to indicate the time interval over which the statistics were collected.” Using time stamps to specify when the statistics are collected indicates only when the statistics are collected, *not when to collect the statistics*. In contrast to *Fletcher*, the approach of Claim 24 features “a service level contract definition that defines **apply times for performing the one or more tests**,” and therefore when the tests are to be performed is specified in advance of performing the tests in the approach of Claim 24.

For example, if an apply time were specified as 2:00 PM on a given day, the tests are performed at the specified time with the approach of Claim 24. However, in the approach of *Fletcher*, there is nothing about specifying in advance when to collect the statistics, rather, *Fletcher* only describes using time stamps to tell after the statistics are collected when that occurred, which could be any time.

In addition, the Applicant is unable to identify anything in the first cited portion of *Fletcher* that could be construed as disclosing “receiving a service level contract definition” as featured in Claim 24. As discussed in the application, a service level agreement (SLA) is different than a service level contract (SLC). Specifically, the application explains that an “**SLA defines the expected level of service for a specific type of network operation** (e.g., DNS lookup response time, or Jitter) that is guaranteed by a service provider. An SLA encapsulates the type of network service that should be monitored, the acceptable levels of performance (thresholds), and the list of device pairs covered by the SLA.” (Application, page 10, lines 20-24; emphasis added.)

In contrast to an SLA, the application explains that an **SLC** “**is a contract or agreement between a service provider and a customer. An SLC contains one or more specific SLAs** and defines the time range or interval for which the corresponding SLAs apply. For example, an SLC may indicate that a particular set of SLAs are to be applied from 8:00am-7:00pm on Monday through Friday.” (Application, page 11, lines 6-10; emphasis added.)

The Applicant is unable to identify anything within the cited portion of *Fletcher* that corresponds to such a service level contract definition. Therefore, the Applicant respectfully submits that *Fletcher*’s description of using time stamps does not disclose, teach, suggest, or render obvious “receiving a service level contract definition that defines **apply times for performing the one or more tests.**”

Regarding the second cited portion of *Fletcher* that the Office Action relies upon as disclosing the “verifying” step of Claim 24, the cited portion describes the monitoring of application response time between a client and a server and reporting the statistical results to an edge monitor that determines whether the response time is acceptable or not, and if the latter, triggers an alarm. (Col. 25, lines 27-38.) Again, the Applicant is at a loss to understand what in this portion of *Fletcher* could be interpreted as disclosing either a service level agreement definition or a service level contract definition, little less the step of verifying that both definitions conform to a level of service offered to a customer.

As with the rejection of Claim 1, it appears that the Office Action is confusing the application and use of an SLA with the definition of an SLA. The “verifying” step of Claim 24 concerns only verifying that the SLA and SLC definitions conform to the offered level of service. Whether or not the service itself is acceptable or not based on the SLA and SLC is a separate and later concern that only arises when the SLA is applied. In Claim 24, the focus is over whether the definitions of the SLA and SLC are consistent with the level of server that the service provider offered to the customer, and the issue of whether or not the customer eventually receives that level of service has yet to be addressed.

Therefore, based on at least the reasons stated above, the Applicant respectfully submits that Claim 24 is allowable over the art of record and is in condition for allowance because *Fletcher* does not does not disclose, teach, suggest, or in any way render obvious either “receiving a service level contract definition that defines **apply times** for performing

the one or more tests” or “verifying that the *service level agreement definition* and the *service level contract definition* conform with the level of service that has been offered to the customer by the service provider,” as featured in Claim 24.

## CONCLUSION

The Applicant believes that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Further examination on the merits after entry of the amendments above and in light of the remarks is respectfully requested.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

To the extent necessary to make this reply timely filed, the Applicant petitions for an extension of time under 37 C.F.R. § 1.136.

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: June 16, 2005



Craig G. Holmes  
Reg. No. 44,770

2055 Gateway Place, Suite 550  
San Jose, California 95110-1089  
Telephone: (408) 414-1207  
Facsimile: (408) 414-1076

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner for Patents, Mail Stop AMENDMENT P.O. Box 1450, Alexandria, VA 22313-1450.

on June 16, 2005 by Trudy Bagdon